

REMARKS

Claims 1-6 are pending in the present application. Claims 1-6 stand rejected pursuant to an Office Action mailed on January 2, 2009. Each of the pending claim rejection is discussed in detail below.

I. Claim Rejections- 35 U.S.C. §112

Claims 2 and 5 stand rejected under 35 U.S.C §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the examiner rejects claim 2 because claim 2 requires the form-retaining disc to be substantially oval and non-round at the same time. Applicant respectfully submits that the claim 2 limitation of “oval” is not inconsistent with the claim 1 limitation of “non-round” as the latter term is defined in Applicant’s specification. In particular, in page 5, line 10, of the specification, non-round is defined as “the circumferential edge flows smoothly and has a varying radius of curvature R.” According to this definition there is no inconsistency between oval and substantially non-round. Nonetheless, a less ambiguous translation of the word “non-round” would be “non-circular”. Accordingly, claim 1 has been amended to recite that the form-retaining disc is non-circular. This amendment to claim 1 will fully address the pending 35 U.S.C. §112 rejection of claim 2.

Support for the amendment of claim 1 as described above may be found at page 5, line 10-16 of the application as filed. Further support may be found in Fig. 1 where a non-circular form-retaining disc is shown.

Claim 5 stands rejected as indefinite because it is unclear to the examiner what structure “a part” is referring to. Claim 5 has been amended to clarify that “a part” refers to the surface of the disc 7 near the relatively acute angle 20 as shown in Figs. 1 and 3. Support for the amendment to claim 5 may be found in the application as published at page 5, line 16-19.

II. Claim Rejections-35 U.S.C. §102

Claims 1 and 2 stand rejected under 35 U.S.C §102(b) as being anticipated by Fay. (U.S. Pat. No. 6,231,617). Fay discloses a cushioned prosthetic liner for connecting a prosthesis with

the stump of an amputated lower leg. The liner is provided with a stiff member arranged in or on the liner. The stiff member comprises a plate 18c that may coupled to the prosthesis. Further, the stiff member includes longitudinally extending elongate arms 30; see e.g. Fig. 3 of the Fay reference. The arms allow restricted motions only. The plate 18c may be formed in a concave profile when seen on its proximal side, see e.g. column 5, lines 18, 19. Fay, however, does not disclose that the plate is substantially non-circular when viewed from the open end of the stocking. On the contrary, the disclosure of Fay indicates that the plate 18c is probably circular. For example, claim 1 of Fay recites, “a prosthetic liner of generally tubular shape having a rounded closed distal end... a distal attachment plate secured to said prosthetic liner at said distal end thereof...” This disclosure is repeated at column 3, lines 1-10, and throughout the specification. Based upon the foregoing, the only reasonable inference which can be drawn from the Fay disclosure is that the plate 18c is circular. It certainly is not expressly shown or reasonably suggested that the Fay plate be non-circular. Therefore, claim 1 is novel in view of Fay, U.S. Patent No. 6,231,617.

Regarding the pending anticipation of rejection of claim 2, there is no indication in the Fay reference that the form-retaining disc (Fig. 2, item 18b) is substantially oval when viewed from the open end of the stocking. On the contrary, as discussed above, the only reasonable inference which may be drawn from the Fay specification and figures is that this element has a circular cross-section when viewed from the open end of the stocking. Accordingly, claim 2 is also novel in view of the Fay reference.

III. Claim Rejections-35 U.S.C. §103

Claims 3-6 are rejected under 35 U.S.C §103(a) as being obvious over Fay in view of Klotz (U.S. Pat. No. 5,529,575). According to the examiner Fay teaches all of the limitations set forth in claim 1 but fails to teach that the form-retaining disc be substantially triangular. Applicant respectfully disagrees. As described in detail above, the Fay reference does not teach a non-circular form-retaining disc. Accordingly, claims 3-6 are allowable for the reasons set forth in detail above.

In addition, the Klotz reference does not teach or suggest a non-circular form-retaining disc, much less one which has a triangular profile. Klotz discloses a prosthesis including a shrinker socket 12 and a frame 14 fitting and following the contours of the lower socket into which the shrinker socket can be slid and secured, see e.g. Fig. 1 of Klotz. The prosthesis is intended for immediate post-operative use when the residuum is still swelled with edema. The shrinker socket 12 itself is provided with an inner shell 16 and an outer nesting shell 18, see e.g. Figs. 3 and 4. The shrinker socket has been manufactured from a semi-rigid plastic, see e.g. column 4, lines 60-61.

According to the examiner, at page 4 of the Office Action, Klotz teaches a cross-section of the bottom wall of the prosthesis which is substantially triangular in shape. The examiner relies upon Fig. 10 for this conclusion. The examiner further cites, column 1, lines 65-67 to support the proposition that the bottom wall of the Klotz prosthesis is analogous to the triangular form-retaining disc of claim 3. Applicant respectfully disagrees.

According to the Klotz specification, Fig. 10 is a section taken along line 10-10 of Fig. 6. It may be noted from Fig. 6 that this sectional view is taken at a location far removed from the bottom wall 34 of the outer shell 18. Furthermore, at column 2, line 66, it is noted that the inner shell 16 is generally pentagonal in cross-section, not triangular. It may further be noted that the inner shell 16 of Klotz has a bottom wall 24 and the outer shell 18 has a bottom wall 34. At column 3, line 1 and column 3, line 19, both of these bottom walls 34 are described as being generally arcuate in cross-section "arcuate" is defined as a structure which is shaped like an arch or a bow. An arcuate bottom wall 24 or 34 is not substantially triangular as required by claim 3. Furthermore, an arcuate shape cannot be triangular with rounded corners as recorded by claim 4. Finally, an arcuate shape cannot suggest the triangular disc as more specifically recited in claim 5 and 6.

For the reasons set forth above, Applicant respectfully submits the claims as filed are allowable over the art of record and reconsideration and issuance of a notice of allowance are respectfully requested. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefor to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to deposit account No. 19-5117.

Respectfully submitted,

Date: 5/4/09

A handwritten signature in black ink, appearing to be 'James L. Brown', written over a horizontal line.

James L. Brown, #48,576
Swanson & Bratschun, L.L.C.
8210 Southpark Terrace
Littleton, CO 80120
Telephone: (303) 268-0066
Facsimile: (303) 268-0065

S:\ClientFolders\0064 (Vereenigde)\29\OA Response 1.doc